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## Rules, Regulations, Orders

### TITLE 7—AGRICULTURE SUGAR DIVISION

DETERMINATION OF (1) NORMAL YIELD OF COMMERCIALY RECOVERABLE SUGAR PER ACRE AND (2) ELIGIBILITY FOR PAYMENT WITH RESPECT TO ABANDONMENT AND CROP DEFICIENCY FOR FARMS IN THE MAINLAND CANE SUGAR AREA

Pursuant to the provisions of Section 303 of the Sugar Act of 1937,<sup>1</sup> I, H. A. Wallace, Secretary of Agriculture, do hereby determine:

1. That the normal yield of commercially recoverable sugar per acre for any farm in the mainland cane sugar area on which sugarcane was grown and marketed (or processed by the producer) for the extraction of sugar shall be the product of the average number of hundred-weights of sugar, raw value, recovered per short ton of sugarcane processed for the extraction of sugar during the 1935-36 and 1936-37 crop seasons in the district in which the farm is located and (1) the average yield of sugarcane for sugar per acre, in short tons, for the farm during the crop years 1935 and 1936, if sugarcane for sugar was grown on the farm during both of such crop years, or (2) the average yield per acre, in short tons, of sugarcane for sugar harvested during the crop years 1935 and 1936 on similar farms in the community in which the farm is located, if sugarcane for sugar was not grown on the farm in both of such crop years.

2. That for the purposes of paragraph 1 above, a district shall be any one of the following groups of parishes or counties:

I. Iberia, Lafayette, Acadia, St. Martin, St. Mary and Vermilion parishes, Louisiana.

II. Rapides, St. Landry, Evangeline, Avoyelles and West Feliciana parishes, Louisiana.

<sup>1</sup> 50 Stat. 903.

III. Assumption, La Fourche and Terrebonne parishes, Louisiana.

IV. Ascension, Iberville, Pointe Coupee, East Baton Rouge, West Baton Rouge, St. Charles, St. James, St. John, St. Bernard, Jefferson and Plaquemines parishes, Louisiana.

V. Indian River county, Florida.

VI. All other counties in Florida where sugarcane is grown and processed for the extraction of sugar.

3. That any farm located in a parish or county in which the actual yields of commercially recoverable sugar from the sugarcane for farms comprising 10 percent or more of the acreage of such sugarcane were 80 percent or less of the normal yields therefor, because of drought, flood, storm, freeze, disease or insects, shall be eligible for abandonment and deficiency payments, pursuant to section 303 of the said act.

Done at Washington, D. C. this 22d day of December 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,  
Secretary.

[F. R. Doc. 38-3896; Filed, December 23, 1938;  
12:38 p. m.]

### TITLE 17—COMMODITY AND SECURITIES EXCHANGES COMMODITY EXCHANGE COMMISSION

United States of America—Before the  
Commodity Exchange Commission

[Hearing Docket C. E. A. No. 3]

IN THE MATTER OF LIMITS ON POSITION  
AND DAILY TRADING IN WHEAT, CORN,  
OATS, BARLEY, RYE, AND FLAXSEED, FOR  
FUTURE DELIVERY

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

As used herein, the word "grain" includes wheat, corn, oats, barley, rye, and flaxseed, and the word "person" includes individuals, associations, partnerships, corporations, and trusts.

## CONTENTS

### RULES, REGULATIONS, ORDERS

<b>TITLE 7—AGRICULTURE:</b>	Page
Sugar Division:	
Mainland cane sugar area, determination of normal yield of commercially recoverable sugar per acre, etc.....	3145
<b>TITLE 17—COMMODITY AND SECURITIES EXCHANGES:</b>	
Commodity Exchange Commission:	
Limits on position and daily trading in wheat, etc., for future delivery; findings of fact, etc.....	3145
<b>TITLE 21—FOOD AND DRUGS:</b>	
Bureau of Narcotics:	
Extension of time within which order forms for narcotics may be filled....	3147
<b>TITLE 26—INTERNAL REVENUE:</b>	
Bureau of Internal Revenue:	
Income tax; income from transmission of messages from points within to points without the United States.....	3147
<b>TITLE 34—NAVY:</b>	
Navy Department:	
Bureau of Supplies and Accounts Manual, articles superseded.....	3147
<b>TITLE 47—TELECOMMUNICATION:</b>	
Federal Communications Commission:	
Commercial radio operators, rules governing.....	3155
Filing of information, etc.; damage claims relating to traffic.....	3158
General substantive rules, provision relating to common carriers.....	3154
Professional radio operators, rules repealed.....	3158
Tariffs, posting, filing, etc., of; changes in schedules....	3158

(Continued on next page)





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#### CONTENTS—Continued

TITLE 49—TRANSPORTATION AND RAILROADS:	
Interstate Commerce Commission:	Page
Class I motor carriers of property and passengers, annual reports .....	3158
Motor carrier employees, maximum hours of service....	3158
NOTICES	
Department of the Interior:	
Division of Territories and Island Possessions:	
Alaska Railroad, excursion fares.....	3159
Department of Labor:	
Wage and Hour Division:	
Employers of industrial home workers, hearing on keeping of special or additional records by.....	3159
Federal Communications Commission:	
Renewal of commercial radio operator licenses .....	3159
Securities and Exchange Commission:	
Pennsylvania Investing Corp., hearing .....	3160
Utilities Employees Securities Co., New England Capital Corp., withdrawal of application.....	3160

#### Findings of Fact

Pursuant to the provisions of Section 4a of the Commodity Exchange Act (U. S. C., 1934 ed. and Supp. III, title 7, sec. 6a), the Commodity Exchange Com-

mission, after full consideration of the record made at a public hearing<sup>1</sup> held in Chicago, Illinois, beginning December 1, 1937, of which due public notice had been given, and at which all persons were given opportunity to hear, present, refute, and comment upon evidence in the premises, does hereby find the following:

A. Except as otherwise stated herein, trading in any one grain for future delivery on a contract market, by a person who holds or controls a speculative net position of more than 2,000,000 bushels, long or short, in any one future or in all futures combined, in such grain on such contract market, tends to cause sudden and unreasonable fluctuations and changes in the price of such grain not warranted by changes in the conditions of supply or demand, and is not needed to maintain market liquidity or to facilitate hedging on such contract market.

B. A speculative long or short position in excess of 2,000,000 bushels consisting of spreads in any one grain between markets is less likely to cause sudden and unreasonable fluctuations and changes in price than that mentioned in paragraph A hereof.

C. Except as otherwise stated herein, speculative buying or speculative selling by any person during one business day of more than 2,000,000 bushels in any one future, or in all futures combined, in any one grain on any one contract market, tends to cause sudden and unreasonable fluctuations and changes in the price of such grain not warranted by changes in the conditions of supply or demand, and is not needed to maintain market liquidity or to facilitate hedging on such contract market.

D. The buying or selling of amounts in excess of 2,000,000 bushels in any one future is less likely to cause sudden and unreasonable fluctuations and changes in price than that mentioned in paragraph C hereof if such buying or selling consists of spreads in any one grain between markets.

#### Conclusions

Upon the foregoing facts, it is concluded that in order to diminish, eliminate, or prevent the undue burden of excessive speculation in grain futures which causes unwarranted price changes, it is necessary to establish limits on the amount of speculative trading, under contracts of sale of grain for future delivery on contract markets, which may be done by any one person; that 2,000,000 bushels is a reasonable limitation on the net long or net short position which any person may hold or control and upon the daily purchases or sales which any person may make, in any one grain on any one contract market, in any one future or all futures combined; that a higher limitation should be fixed for net posi-

tion and for purchases and sales if any part thereof represents spreading in the same grain between markets, and 3,000,000 bushels is a reasonable limitation under such circumstances, but in no event should the increase over 2,000,000 bushels exceed the amount of the net position represented by spreading nor should a spread include more than 2,000,000 bushels in any one future.

#### Order

It is hereby ordered, That the following limits on the amount of trading under contracts of sale of grain for future delivery on or subject to the rules of contract markets which may be done by any person be, and they are hereby, proclaimed and fixed, to be in full force and effect on and after December 31, 1938:

#### Position Limits

1. The limit on the maximum net long or net short position which any one person may hold or control in any one grain on any one contract market, except as specifically authorized by paragraph 2 hereof, is: 2,000,000 bushels in any one future or in all futures combined.

2. To the extent that the net position held or controlled by any one person in all futures combined in any one grain on any one contract market is shown to represent spreading in the same grain between markets, the limit on net position in all futures combined set forth in paragraph 1 hereof may be exceeded on such contract market, but in no case shall the excess result in a net position of more than 3,000,000 bushels in all futures combined nor more than 2,000,000 bushels in any one future.

#### Daily Trading Limits

3. The limit on the maximum amount which any person may buy, and on the maximum amount which any person may sell, of any one grain on any one contract market during any one business day, except as specifically authorized by paragraph 4 hereof, is: 2,000,000 bushels in any one future or in all futures combined.

4. To the extent that purchases or sales of any one grain on any one contract market during any one business day made by any person are shown to represent spreading, or the closing of spreads, in the same grain between markets, the limit set forth in paragraph 3 hereof may be exceeded on such contract market, but in no case shall the excess result in total purchases of more than 3,000,000 bushels, or total sales of more than 3,000,000 bushels, and in no event shall such person's total purchases or total sales, during any one business day, in any one future exceed 2,000,000 bushels.

The foregoing limits upon position and upon daily trading shall not be construed

<sup>1</sup> 2 F. R. 2460 (2859 DI).



to apply to bona fide hedging transactions as defined in paragraph (3) of section 4a of the Commodity Exchange Act.

Nothing contained in these Findings of Fact, Conclusions, or Order shall be construed to affect any provisions of the Commodity Exchange Act relating to manipulation or corners, nor to relieve any contract market, or its governing board, from responsibility to prevent manipulation and corners under paragraph (d) of section 5 of the Commodity Exchange Act.

In testimony whereof we have hereunto affixed our respective signatures this 22d day of December, 1938.

H. A. WALLACE,  
*Secretary of Agriculture, Chairman.*  
DANIEL C. ROPER,  
*Secretary of Commerce.*  
HOMER CUMMINGS,  
*Attorney General.*

[F. R. Doc. 38-3895; Filed, December 23, 1938;  
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#### TITLE 21—FOOD AND DRUGS BUREAU OF NARCOTICS

[T. D. 29]

##### AMENDING NARCOTIC REGULATIONS TO EXTEND TIME WITHIN WHICH ORDER FORMS FOR NARCOTICS MAY BE FILLED

Pursuant to the authority contained in Section 1 of the Act of December 17, 1914 (38 Stat. 785; U. S. Code (1934 Ed.) Title 26, Sec. 1049), as amended by Section 703 of the Revenue Act of 1926 (44 Stat. 9, 96) and Section 806 of the Revenue Act of 1936 (49 Stat. 1648, 1745), Article 82 of Narcotic Regulations No. 5, approved June 1, 1938,<sup>1</sup> is hereby amended to read as follows:

"ART. 82. *Filing of orders.*—The consignor shall enter upon the order form the number and size of the stamped packages furnished on each item and the date when each item is filled. When an order can not be filled in its entirety it may be filled in part and the balance supplied by additional shipments within 60 days from the date of the order form. A notation, covering each shipment, showing the actual quantities supplied and the date of delivery, shall be made by the vendor on the original and by the vendee on the duplicate."

[SEAL] H. J. ANSLINGER,  
*Commissioner of Narcotics.*  
GUY T. HELVERING,  
*Commissioner of Internal Revenue.*

Approved, December 16, 1938.

WAYNE C. TAYLOR,  
*Acting Secretary of the Treasury.*

[F. R. Doc. 38-3890; Filed, December 23, 1938;  
11:59 a. m.]

<sup>1</sup> 3 F. R. 1299 DI.

#### TITLE 26—INTERNAL REVENUE BUREAU OF INTERNAL REVENUE

[T. D. 4977]

##### INCOME TAX

##### INCOME FROM TRANSMISSION OF MESSAGES FROM POINTS WITHIN THE UNITED STATES TO POINTS WITHOUT THE UNITED STATES

*To Collectors of Internal Revenue and Others Concerned:*

Regulations 94, approved November 12, 1936,<sup>1</sup> and Regulations 86, approved February 11, 1935, are amended as follows:

(a) Article 119-14 of Regulations 94 and 86 is redesignated "Article 119-15."

(b) A new article is added after article 119-13 of Regulations 94 and 86 to read as follows:

"ART. 119-14. *Telegraph and cable service.*—A foreign corporation carrying on the business of transmission of telegraph or cable messages between points in the United States and points outside the United States derives income partly from sources within and partly from sources without the United States.

"(1) *Gross income.*—The gross income from sources within the United States derived from such services shall be determined by adding (a) its gross revenues derived from messages originating in the United States and (b) amounts collected abroad on collect messages originating in the United States and deducting from such sum amounts paid or accrued for transmission of messages beyond the company's own circuit. Amounts received by the company in the United States with respect to collect messages originating without the United States shall be excluded from gross income.

"(2) *Net income.*—In computing net income from sources within the United States there shall be allowed as deductions from gross income determined in accordance with paragraph (1), (a) all expenses incurred in the United States (not including any general overhead expenses) incident to the carrying on of the business in the United States, (b) all direct expenses incurred abroad in the transmission of messages originating in the United States (not including any general overhead expenses or maintenance, repairs and depreciation of cables and not including any amount already deducted in computing gross income), (c) depreciation of property (other than cables) located in the United States and used in the trade or business therein, and (d) a proportionate part of the general overhead expenses (not including any items incurred abroad corresponding to those enumerated in (a), (b) and (c)) and of maintenance, repairs and depreciation of cables of the entire cable system of the enterprise based on the ratio which the number of words origi-

<sup>1</sup> 1 F. R. 1802.

nating in the United States bears to the total words transmitted by the enterprise."

This Treasury Decision is issued under the authority contained in sections 62 and 119 of the Revenue Acts of 1936 and 1934.

[SEAL] GUY T. HELVERING,  
*Commissioner of Internal Revenue.*

Approved, December 22, 1938.

JOHN W. HANES,  
*Acting Secretary of the Treasury.*

[F. R. Doc. 38-3891; Filed, December 23, 1938;  
11:59 a. m.]

#### TITLE 34—NAVY NAVY DEPARTMENT

##### BUREAU OF SUPPLIES AND ACCOUNTS MANUAL<sup>1</sup>

SEC. 4.1014 *Methods of purchase (ashore and afloat).* Three methods of purchase are established:

Purchase after newspaper advertisement.

Purchase after advertising by means of circulars, letters, or bulletins.

Purchase in a manner common among business men.

*Forms of agreement.*—

The two forms of agreement used are as follows:

*Formal contracts:* The transaction is reduced to writing and signed by both parties at the end thereof.

*Less formal contracts:* When the amount involved is \$500 or less and the transaction is completed with an order, written proposal and acceptance, or an oral agreement immediately executed.

SEC. 4.1015 *Methods of purchase by Bureau of Supplies and Accounts—Routine procedure.* The following is a description of the routine followed by the Bureau of Supplies and Accounts in the purchase of stock materials for the supply departments of yards, stations, and supply depots.

*Advertising.* The manner of advertising as required by law is one of departmental discretion, but the Bureau of Supplies and Accounts relies principally on the distribution of schedules. Newspaper advertising, as required by Sec. 3718, R. S., 34 U. S. C. 561, is resorted to when time permits.

*Schedules.* At such times as the stock requests (S. and A. Form 235) and requisitions (S. and A. Form 76) received from yards and stations render purchase by the bureau necessary and market conditions are favorable, the bureau consolidates these requests and requisitions in the form of schedules for distribution to prospective bidders. Three copies are sent to each dealer in the particular commodity to be purchased as shown by the bureau's mailing list of bidders. Sched-

<sup>1</sup> Supersedes the articles bearing same numbers in Code of Federal Regulations.



ules are printed or mimeographed and contain such essential data as—

The schedule number, date, and hour of opening bids.

The material required, by quantities, and divided into classes by commodities and delivery points.

The points of delivery.

The specifications.

Navy leaflet specifications are not sent with the schedule. If a bidder does not have them in his possession, he may apply to the Bureau of Supplies and Accounts or to any navy yard, supply depot, or purchasing office for copies. Copies of schedules are also mailed to the supply activities at the delivery points concerned as notice to supply officers of the bureau's action.

**Standard Form 31, Navy edition** (*Standard Government Form of Bid, Supply Contract*). With each schedule are mailed two copies of Standard Form 31, Navy edition, which, after being filled out in accordance with the detailed instructions printed thereon, serves bidders as a transmitting letter, guaranty, and cover for schedule. Standard Form 31 and the schedule, both filled out, constitute the formal proposal or bid.

**Opening bids.** Three weeks is the average time allowed between the time schedules are sent out and date bids are opened. When bids are received, they are placed in locked boxes where they remain until the advertised hour for opening, when they are removed and opened, concurrently and publicly, under the supervision of an officer. All bids are read aloud in the presence of bidders, press representatives, and representatives of bonding companies, and are immediately recorded in books which are at all times open for inspection. Late bids are not considered unless it can be shown by post marks, registry receipts or otherwise, that they were mailed in sufficient time to have arrived by the hour set for the opening, and where it is clearly evident that no unfair advantage has accrued to the late bidder by reason of the delay. Telegraphic bids are not considered, unless asked for, but telegraphic modifications or withdrawals are accepted if received prior to the hour of opening. After all bids have been read and recorded, the duplicate copies thereof are placed on a counter where they may be examined by all interested parties.

**Awards.** Awards are made to the lowest responsible bidder offering material in accordance with the specifications, except in a few cases of statutory exemption where the Government is not required to accept the low bid. Tie bids are decided by lot. The Navy always reserves the right to award by item rather than by class; to reject all bids; and to accept modified bids if this can be done without injustice to other bidders. Awards are made as soon as a decision is reached. Awards which involve no technical consideration are made immediately. Bids which require

the recommendation of a technical bureau or a navy yard are submitted thence, and awards made as soon thereafter as practicable. Telegraphic notice of award is made in important cases. A formal award is made in all cases.

**Bureau contract or order—Contracts.** After award is made, a formal contract is prepared on Standard Form 32, Navy edition, if the amount involved is over \$500. A blank form for bond is printed on the back of the contract form and is prepared by the bureau for execution by the contractor in each case except where the contractor has an annual bond on file. The original contract, unsigned, is mailed to the contractor for signature and execution of bond. With the contract the bureau sends, for the contractor's retention, a memorandum containing all the essential data of the contract and a statement by the Paymaster General that a contract has been entered into by the Navy. The original contract, after being executed by the contractor, is returned to the bureau. It is then signed by the purchasing officer and forwarded to the General Accounting Office. The Navy signs and requires a contractor to sign but one copy of a contract.

**Bureau orders (N. S. A. Form 526).** Bureau orders are prepared where the amount involved is \$500 or less, no contract or bond in such cases being required.

**Copies.** Copies of bureau contracts and orders are prepared and distributed to bureaus, supply officers, inspectors, and others concerned. Certified copies of contracts, together with the necessary affidavit form and all bids received are filed with the Returns Office of the General Accounting Office in accordance with Sec. 3744, R. S., 41 U. S. C. 16.

**S. and A. contract bulletins.** The Bureau of Supplies and Accounts distributes bulletins and circular letters showing articles covered by the Bureau of Supplies and Accounts annual and quarterly contracts, such as packings, coal, gasoline and distillate, lubricating oil, fuel oil, boiler gaskets, CO<sub>2</sub> gas, and tool steel.

**SEC. 4.1017 Purchases in the manner common among business men (ashore and afloat)—Authority.** The authority to make purchases "in the manner common among business men" is contained in the Act of March 2, 1907 (34 Stat. 1193), 34 U. S. C. 571.

**Ashore.** All shore stations where there is a regularly organized supply department and all Navy purchasing offices are authorized to make sundry purchases of articles and to procure services on approved requisitions in a direct manner such as is "common among business men."

**Requisition necessary.** Purchase may be made under annual requisition for sundry purchases, annual requisition for certain supplies or services, or duly approved individual requisition.

**Method of purchase not to be used for certain materials.** No article, material,

or services may be purchased in this manner which, under other instructions, require procurement thereof from or through some other department or establishment of the Government.

Services of a temporary nature only may be procured under this authority. Services of a continuous nature, such as towel service, water, etc., required from month to month will be procured under written contract in the usual manner.

Printing machinery or equipment shall not be purchased in this manner.

**Limitation on cost of items purchased.** The limit of cost of any one item or group of items of similar material that may be so purchased at industrial navy yards, Navy purchasing offices, naval supply depots, the Naval Torpedo Station, Newport, the Naval Aircraft Factory, and the Naval Air Stations, Pensacola, San Diego, and Norfolk, is \$500 and at other shore activities \$200, unless otherwise specifically authorized by the Bureau of Supplies and Accounts.

**Procedure.** Under this authority, the purchasing officer may purchase any article or services required within the limits of the requisition without advertisement and without formal bids or written awards. Bids may be obtained orally (over the counter), by telephone, by telegraph, or by written invitations. Competition should be secured whenever it is practicable to do so without delaying procurement, unduly increasing the work involved in the procurement, or otherwise obviating the benefits derived by this method of purchase. A written record showing the form of bids (oral, telephonic, telegraphic, or written) will be made of bids received, and kept in the files of the purchasing (supply) officer. When competition is obtained, the order will be placed with the dealer quoting the lowest price for satisfactory delivery. The order may be placed in writing, or orally (over the counter), by telephone, or by telegraph; and written confirmation is not required.

**Public voucher (Standard Form 1034)** will be prepared, based on dealer's invoice in the prescribed manner. When purchase is made on annual requisitions, the word "sundry" will be entered following the requisition number. In the administrative certificate on the face of the public voucher, the blank following "No." will be filled in by the figure "4"; on the back of the public voucher, the "Method or absence of advertising" will be filled in by entering opposite "4" the words "Act of March 2, 1907 (34 Stat. 1193)." No formal contract or other written agreement being required, no statement and certificate of award (Standard Form 1036) will be required.

**Afloat.** Ships operating directly under the general supply system may employ the method of purchase described above under the following additional restrictions:

The authority contained herein is not intended to be used as a means to circumvent the established methods of pro-



curement nor to obtain special or non-standard material in contravention of instructions issued by cognizant bureaus or contained in Navy Regulations.

The limit of cost of any one item or group of items of similar material that may be so purchased is \$50, unless otherwise specifically authorized by the Bureau of Supplies and Accounts.

When a ship is at a navy yard or naval station, no item shall be purchased unless and until the ship has ascertained that the item cannot be supplied from stock by the supply activity on shore. When the item cannot be supplied from stock, the ship may requisition same for purchase by the supply activity.

Purchases made under annual requisitions will be taken up in Class 201 and immediately expended to use.

Annually, each ship operating directly under the general supply system shall forward to the Bureau of Supplies and Accounts for approval an annual requisition covering purchases authorized by this article, for the amount stated in the Bureau of Supplies and Accounts Memoranda.

Sec. 4.1028 *Special instructions—List of bidders—Mailing list.* All purchasing officers ashore shall keep an up to date mailing list of bidders.

*Manufacturers to be invited to bid.* Purchasing officers will whenever practicable, encourage manufacturers to submit bids direct. Manufacturers will be furnished with proposals, accompanied by a letter requesting them to bid and pointing out the advantages of doing business direct with the Government. (See Sec. 4.1043.)

*Defaulting contractors not to be invited to bid.* See Sec. 4.1081.

*Inviting bids when making an award is uncertain.* Purchasing officers shall avoid sending out proposals and asking for bids when not reasonably certain that an award will be made. It is unfair to put manufacturers or contractors to the trouble and expense of drafting bids unnecessarily.

*Specifications.* Specifications should contain all the essential or minimum requirements without naming details which are not essential and would limit competition.

Whenever possible, specifications shall include a clause to the effect that bids to furnish other designs or material than that specified will be considered. Under such liberal specifications the right is had to reject any bid covering an article not suitable in every respect for the purpose for which desired.

The description of a proprietary article will not be used unless nothing else will answer the needs of the service and such a proprietary certificate is made on the requisition.

*Acceptable list of approved materials.* The Acceptable List of Approved Materials, issued by the Bureau of Supplies and Accounts covers materials which require extended test prior to purchase in order to determine suitability for Naval use. The purpose of this list is to facili-

tate the purchase of satisfactory materials: (1) When the time required for complete test after execution of a contract is so great as to delay delivery; (2) and/or the cost of inspecting is prohibitive; (3) and/or the necessary tests require complicated or expensive testing apparatus not in general commercial use; (4) and/or the technical requirements cannot be fully described by a specification; (5) and/or the material is of an experimental nature.

Bid forms for items on the Acceptable List of Approved Materials will be distributed not only to the manufacturers and regular dealers listed but also to other prospective sources of supply. Such bid forms will contain a notation as follows:

Name of manufacturer (not the dealer) \_\_\_\_\_  
Type or brand offered \_\_\_\_\_

Manufacturers not listed should be encouraged to apply to have their products tested.

The applicable one of the following acceptable list clauses will be inserted on bid forms for items on the Acceptable List of Approved Materials:

(1) *When the specification contains no reference to prior test requirement and the item is listed in the Acceptable List of Approved Materials:*

The right is reserved to reject bids on (here insert "brands" or "types" as applicable) of (here insert name of material) which have not been subjected to the required tests and found satisfactory. The attention of manufacturers is called to this requirement, and they are urged to forward samples of the articles they propose to offer the Navy in the future in order that the tests may be made. These tests will be conducted at the expense of the manufacturers. Information with reference to the expense involved and as to where samples should be sent will be supplied upon application to the Bureau of Supplies and Accounts, Navy Department, Washington, D. C. In the case of failure of the sample submitted to prove satisfactory consideration will be given to the requests of manufacturers for additional tests only after it has been clearly shown that changes have been made in the product with reference to design, method of manufacture, etc., which the Bureau considers sufficient to warrant additional tests.

(2) *When the specification contains the acceptable list clause quoted under subpar. (1):*

The attention of bidders is invited to paragraph \_\_\_\_\_ of the specifications, wherein it will be noted that the right is reserved to reject any bids on (brands) (types) of (here insert name of material) which have not been subjected to the required tests and found satisfactory. The attention of manufacturers is called to this requirement, and they are urged to take the necessary steps to have their product tested. For information regarding tests, apply

to the Bureau of Supplies and Accounts, Navy Department, Washington, D. C.

(3) *When the old type of test clause or "service test" clause appears in the specification:*

Except as amended below the \_\_\_\_\_ shall be in strict accordance with specification \_\_\_\_\_, issued by the Navy Department. Paragraph \_\_\_\_\_ is amended to read as follows: (Quote clause given under subpar. (1).)

*When Government is to furnish material.* When the Government proposes to furnish the raw materials to be fabricated by contractors, schedules will specify whether the Government retains title to all raw materials furnished. If the title is retained, a clause will be incorporated in the advertisement to the effect that bond or insurance shall be furnished by the contractor in an amount representing the value of the material, to protect the Government against loss by fire, theft, etc.

*Where partial payments are to be made.* (a) See Sec. 3648, R. S.; 31 U. S. C. 529.

(b) The Act of Aug. 22, 1911 (37 Stat. 32), 34 U. S. C. 582, authorizes partial payments during the progress of work under contracts, not in excess of the value of work already done. Whenever proposals or schedules are issued in which partial payments as the work progresses are provided for, the following provision will be incorporated therein:

When partial payments are made as herein provided, it is understood that the Government has a lien on the articles or material covered by this contract, such lien to be paramount to all other liens upon the same and this bid is submitted under the express condition that such lien is given.

A bond on contract covering this class will be required in an amount sufficient to cover the partial payments to be made in addition to the delivery bond regularly provided for.

*Readvertising for bids.* Readvertisement or a supplementary opening of bids should be avoided as far as practicable.

*Precautions against unbalanced bids on estimated quantity contracts.* An unbalanced bid is one submitted by a bidder who bids high on certain items in a class, and so low on other items which are less frequently, even seldom, required, that he is certain to underbid competitors on such items—his quotations being so figured that his total bid for the class is low—the bidder making it as sure as he can, by shrewd judgment or otherwise, that his low-cost items will not be called for. Contractors are able at times to do this, as, with the exception of provisions, ships' stores and commissary stores stocks, awards of contracts are generally made to the lowest responsible bidder on an entire class, except when, in accordance with a right always to be reserved in the stipulated conditions of bidding,



the saving to the Government from award by items will be material or when the result of the bidding shows that the material has not been properly classified, in which case awards are made by items. Purchasing officers should carefully guard against unbalanced bids by preparing proposals with the articles to be bought so classified as to nature, quantities, and sizes needed that prospective bidders will find it practically impossible to submit unbalanced bids with any hope of success.

*Representations and stipulations prescribed by Act of June 30, 1936.* The Act of June 30, 1936 (49 Stat. 2036, 41 U. S. C., Supp. II, 35), provides that certain representations and stipulations be included in bids and contracts exceeding \$10,000, except when such bid or contract covers certain items specifically exempted in the act (statutory) or by the Department of Labor under authority of the act (administrative).

*Exemptions.* The exemptions in so far as the Navy is concerned are as follows:

Contracts for \$10,000 or less.

Contracts for perishables, including dairy, livestock and nursery products. This covers products subject to decay or spoilage, but not products canned, salted, smoked, or otherwise preserved. Invitations for bids and contracts for perishables within the scope of the exemption will be confined to such products, and not include any products or supplies subject to the stipulations.

Contracts with a common carrier for carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line, where published tariff rates are in effect. Contracts for drayage and transportation of household effects are exempted from the stipulation only when the prices are based on published tariff rates.

Contracts for the furnishing of service by radio, telephone, telegraph, or cable companies, subject to the Federal Communications Act of 1934.

Contracts for public utility services including electric light and power, water, steam, and gas.

Contracts which are to be performed outside the geographic limits of the United States, its territories, and the District of Columbia, except when such performance requires a shipment from within such geographic limits.

Contracts covering purchases against the account of a defaulting contractor when the stipulations were not included in the defaulted contract.

On all bids other than those exempted, the following stipulations shall be included, and subsequently incorporated in the contract:

*Representations and stipulations pursuant to Act of June 30, 1936 (49 Stat. 2036; 41 U. S. C., Supp. II, 35).* It is understood and agreed that this bid is submitted, and any contract awarded thereon in any amount exceeding \$10,000.00 will be performed, subject to the representations and stipulations of Pub-

lic Act No. 846, 74th Congress, and regulations issued by the Secretary of Labor pursuant thereto, as follows:

(a) The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

(b) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: Provided, however, That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(c) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the

amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: Provided, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(g) The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(h) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.00.

A bidder or contractor shall be deemed to be a "manufacturer" or "regular dealer" within the meaning of stipulation (a) if he falls within one of the following categories:

(a) A manufacturer is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(b) A regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

Every bid received from any bidder who does not fall within one of the foregoing categories shall be rejected.

Until otherwise set by the Secretary of Labor, the rate of pay for any overtime performed under the conditions of



stipulation (c) shall be one and one-half times the basic hourly rate or piece rate received by the employee. Overtime in any one week or part thereof an employee is engaged in work covered by the contract stipulations, shall be computed after eight hours in any one day or after 40 hours in any one week during which no single daily total of employment may be in excess of eight hours without payment of the overtime rate.

The stipulations affecting employees shall be deemed applicable only to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract and shall not be deemed applicable to office or custodial employees.

An contractor subject to the representations and stipulations embodied herein shall maintain the following records of employment which shall be available for the inspection and transcription of authorized representatives of the Secretary of Labor.

(a) Name, address, sex, age, and occupation of each employee covered by the contract stipulations.

(b) Wage and hour records for each such employee including the rate of wages and the amount paid each pay period, the hours worked each day and each week, and the period during which each such employee was engaged on a Government contract with the number of such contract.

Such records shall be kept on file for at least one year after the termination of the contract.

Stipulation (b), with respect to wages, is inoperative until the Secretary of Labor, prior to the invitation for bids, has made a determination of the prevailing minimum wage for the industry or group of industries producing or marketing materials within the scope of the contract, and the determination of prevailing minimum wages or changes therein are so indicated in the invitation for bids.

When the stipulations are incorporated in the invitation to bid by the use of a separate sheet, standard Government form of bid (Standard Form 31), signed by the bidder, will include a clause as follows:

This bid is made subject to the representations and stipulations of Act of June 30, 1936 (49 Stat. 2036; 41 U. S. C., Supp. II, 35) attached hereto, where applicable.

*Specific exemptions may be authorized by Department of Labor.*

Sec. 4.1044 *Making awards—Release of bids on account of errors therein.* The United States is not responsible for mistakes in price made by a bidder, and an accepted bid is binding unless the prices bid are so disproportionate as to put the contracting officer on notice and their en-

forcement would be unconscionable. A contract must be considered as a whole and certain items may not be singled out for settlement on the basis of a quantum meruit.

*Relief in case of manifest error.* If award has not been made, the bidder may be permitted to withdraw his bid and the award should then be made to the next lowest bidder.

After award the discretion vested in the purchasing officer to release a bidder ceases, and requests received from contractors for release on contracts based on bids made in error will be forwarded to the Bureau of Supplies and Accounts accompanied by full data, comment, and recommendation for decision and action. Relief may then be obtained only by submission of the whole matter to the General Accounting Office.

*Lowest unqualified bid to win award.* The lowest eligible bidder offering to deliver articles in accordance with specifications is, in the absence of specific laws and regulations to the contrary entitled to the award. (See Sec. 3718, R. S., 34 U. S. C. 561.) While purchases under Sec. 3721, R. S., 34 U. S. C. 569, need not be made from the lowest bidder, yet other things being equal, the lowest bid, if more than one has been obtained, shall be accepted.

Bids that offer the lowest net transportation rate available to the Government may be considered, provided the result of such equalization can be readily and accurately determined before award is made.

*Tie bids,* all other things being equal, will be decided by public drawing of the names of the tie bidders. This drawing may be witnessed by bidders or their representatives present at the time of the drawing. When so requested by a bidder, drawing will be at a set time after due notice to all interested parties.

*Acceptance of one bid constitutes rejection of others.* The acceptance of one bid is a rejection of all other bids, and one of the bids so rejected can not be subsequently accepted so as to hold a guarantor of such rejected bid to his guaranty that such bidder would enter into a contract within 10 days after notice of acceptance of his bid. (Digest of Opinions, J. A. G., U. S. Army, 1912, p. 301.)

*Award to a higher bidder in error.* If an award is made to a higher bidder in error and the contractor has proceeded with manufacture and delivery before the error has been discovered, the contract should be considered complete with deliveries already made, and payment shall be made not in excess of the lowest satisfactory bid which was received at the original opening. The contractor should then be advised that he may submit a claim to the General Accounting Office for the difference between his price and the price quoted by the lowest satisfactory bidder. He may also submit a claim to the General Accounting

Office for any damages which he may have sustained through the suspension of deliveries under his contract.

*Rejection of bids on account of fraud.* The United States may reject a bid in a case of fraud, as where the lowest bidder is in collusion with other bidders or with the representative of the United States to impose a high price upon the Government. In such a case the bids of all bidders concerned in the fraud may be rejected. (Digest of Opinions, J. A. G., U. S. Army, 1912, p. 302.)

*Rejection of bids on account of absence of competition.* Absence of competition is a good reason for rejecting all bids and asking for new ones.

*Readvertisement equivalent to rejection.* A readvertisement is equivalent to a rejection of all bids previously received.

*Determination of award where discounts are offered.* The determination of award where discounts are offered in bids is a matter for decision by the purchasing officer. If, by reason of the offered discount, a bid is low and there appears, in the judgment of the purchasing officer, reasonable certainty that the performance of the necessary administrative duties in connection with receipt, inspection, and payment is practicable of accomplishment, the bid should be accepted; if not, the bid should not be regarded as low.

*When specifications refer to Acceptable List of Approved Materials.* Award will be made to the lowest bidder offering material of a brand or trade name on the Acceptable List of Approved Material.

When it may be to the interest of the Government to accept a lower bid offering material not of an approved brand or if there are any indications that the low bidder is offering material which may have been tested and approved, the bids will be referred to the Bureau of Supplies and Accounts for instructions prior to award.

When rejection is made of a lower bid based on material which has not been tested and approved, the rejection certificate will be worded as follows:

The bid of ----- is rejected for the reason that the material bid on has not been tested and approved as required by the specifications.

*Modification of bids by contracting officers prohibited.* In awarding the contract to the lowest bidder the contracting office can not modify the terms of his bid in regard to the time of delivery or any other of its material elements. (4 Op. Atty. Gen. 334.) While the Government may not force the bidder to accept award under terms different from those contained in his bid, modifications may, after award, be made with bidder's consent, and the changes mutually agreed upon may be embodied in the contract.

No modification of the bid shall be permitted after the opening, and no ne-



negotiations shall be conducted with the bidder which so modifies or changes the bid as to affect the award. (See also 9 Comp. Gen. 24.)

*Awards to delinquent contractors.* See Sec. 4.1081 for instructions.

*Awards to be made within a reasonable time.* An obligation lies upon the Government to make an award within a reasonable length of time after an opening of bids. What constitutes a reasonable time is something that can not be definitely defined. An award should be made at the earliest practicable moment after the opening of bids. A bidder can not, after notice by the Government of acceptance thereof, withdraw his bid. (See Sec. 4.1042.)

*Notice of award not binding upon the Government.* Although a contractor is obligated once the award is made to him, the Government is not bound legally by a notice of award which has not been followed by a contract. The Government is bound by practice, however, and in good faith to follow the notice of award with a contract, if not otherwise illegal. If this was not done, the contractor might refuse to proceed until a signed contract had been issued to him; resulting in a great loss of time in securing material.

*Action necessary where bids exceed requisition estimates.* Awards may be placed at the discretion of the purchasing officer on bids exceeding the estimated cost of the approved requisition, except that under any of the following conditions the bids should be referred via the bureau concerned to the Bureau of Supplies and Accounts for instructions:

When, after reference to the yard department concerned, the purchasing officer does not feel warranted in placing award at the apparently excessive amount.

When the requisition distinctly indicates thereon that bids are to be referred to the bureaus concerned prior to award.

On requisitions for materials for a purpose other than for stock, e. g., an expensive machine for which a special allotment may have been made, when the lowest acceptable bid exceeds the estimated cost by 15 per cent or more and the amount of the bid is more than \$100.

These instructions are not to be applied to the total of all items on a requisition, but to each item or if there is a group of items of a similar nature such that they would ordinarily be bid upon by anyone dealing in that particular line, to the total of that group.

While the telegraph and long distance telephone should not be used when ordinary correspondence can be made to serve, these means of communication with the Bureau of Supplies and Accounts relative to the bids treated in this paragraph will be used when in the judgment of the purchasing or supply officer circumstances demand it.

*Reference of bids.* When necessary, bids will be referred by purchasing officers ashore to the yard department, the

ship, or bureau concerned for recommendation as to award.

Bids to furnish machinery and machine tools will be referred to the bureau having cognizance of the machine in question, for recommendation as to award. In the case of field purchases, the bids, together with the required data, will be referred to the bureau concerned, via head of the division of the yard concerned, for recommendation as to award.

*Acceptance of bids to be in writing.* When bidders' proposals are submitted in writing, the purchasing officer will indorse over his own signature the word, "Accepted," or "Accepted as to items Nos. —," on the proposal winning the award. Acceptance of a bid shall always be in writing.

Certificates on proposals as to acceptance must be actually signed by the officer of the Supply Corps detailed as purchasing officer except when he is absent. In such cases they will be signed by the officer of the Supply Corps who is assistant to the purchasing officer if there is one, or if none, by the pay clerk detailed to duty in the office.

*Forms of awards.* When an award is made to a bidder, it will be embodied either in the form of an order or of a formal contract. If the amount of the purchase is \$500 or less, regardless of the time of delivery, the order will be used.

**SEC. 4.1054 Contract provisions—Provision in regard to quantities—Use of term "estimated quantities," in contracts.** Under a running contract covering estimated quantities, delivery can not be required of more than a reasonable excess above the estimated quantity stated in the contract. The custom is generally established of considering an increase of 25 per cent as about the maximum which can be required. The Supreme Court of the United States, has repeatedly held that "the addition of the qualifying words, 'about,' 'more or less,' and the like \* \* \* is only for the purpose of providing against accidental variations arising from slight and unimportant excesses or deficiencies in number, measure, or weight."

In other than annual, semi-annual, quarterly, or monthly contracts, the exact quantities desired shall be stated. Any variation in the quantity specified, not exceeding 10 percent, will be accepted as a compliance with the contract when caused by conditions of loading, packing, or allowances in manufacturing processes, as provided for in the standard bid, contract, and order forms.

In annual, semi-annual, quarterly, and monthly contracts, one of the following clauses shall be used:

When the requirements can be estimated:

The quantities specified are estimated only, and it is agreed that the Government is obliged to order not less than 75 per cent of the material contracted for. It is further agreed that the contractor will furnish any quantities of the mate-

rial specified which may be ordered for the Naval service at the places designated during the period ending —, 19—, irrespective of the estimated

quantity for each item, provided the aggregate quantity ordered will not exceed by more than 25 per cent the aggregate quantity specified in the estimates.

When it is impossible to determine the quantity or quantities required within a reasonable limit:

The uncertain and varying needs of the Navy make it impossible to determine the quantity or quantities of the articles and materials described herein that may be required during the contemplated period of the contract. Estimated quantities are stated for information only. It is mutually understood and agreed that the Government will order and the contractor will deliver the quantities of the kinds of articles and materials described in the specifications that in the judgment of the ordering officer may be required during the contract period, except as may be otherwise indicated in the bid. These supplies will be ordered from time to time during the life of the contract in such quantities for delivery in such forms and to such places provided for by the contract as the needs of the Naval service require. Bids made with the proviso that the total deliveries will not exceed a certain specified quantity will be considered, but the right is reserved to reject any bid which provides that the Government shall guarantee to take any definite quantity.

*Specifications governing partial deliveries.* In all contracts calling for deliveries covering a period of time the following clause will be used to specify such delivery conditions:

To be delivered, all transportation charges paid, to the Supply Officer, Navy Yard, —, at such times and in such quantities as may be ordered during the period ending —, each delivery to be made within — days after receipt of order from the supply officer.

Under the prescribed wording, difficulties and objections as to orders placed toward the end of a contract period will be avoided, as the clause clearly provides that orders may be placed during the whole contract period.

*Patterns and molds furnished by the Government.* All contracts based on requisitions specifying that the Government shall furnish contractors with necessary patterns or molds to manufacture the required articles shall include a clause specifically stating whether the Government or the contractor shall bear the transportation charges on such patterns or molds when shipped to the contractor, and also when returned by the contractor.

*Provision for inspection—(a) Factory inspection.* Unless specifically provided otherwise in the contract, inspection will be made at the place of manufacture or point of shipment, unless mill or factory



inspection is subsequently waived. (See Sec. 4.1093.)

All handling of material necessary for purposes of inspection shall be done at the expense of the contractor, and all tests shall be made and all test specimens and drillings for check analysis, necessary for the determination of the quality of the material, shall be furnished by the contractor without expense to the United States.

Where unauthorized shipment is made before Government inspection, the United States reserves the right to return the material at the contractor's expense to the place of manufacture for inspection.

Where useless trips of inspector are caused by incorrect information given by the contractor, the United States reserves the right to charge the expense of such trips to the contractor and to deny inspection at the plant.

If the contractor places orders with a subcontractor for all or any portion of the services or materials contracted for, quadruplicate copies of such orders must be furnished to the inspector representing the bureau concerned in the inspection district in which the contractor's works are located. Such orders will state all details concerning the material ordered, including the purpose for which same is used, when stated in the contract. Such orders shall be considered suborders and must contain the number of original contract. In case material requires special treatment, after leaving the manufacturer's works, other than machining, such orders must state explicitly the nature of the treatment.

**Inspection after delivery.** All contracts and orders for material to be inspected after delivery will be plainly stamped (original and copies) in prominent letters as follows: "SUBJECT TO INSPECTION ON DELIVERY."

**Inspection must be made by Government inspectors.** No contracts of the Navy Department should contain any provision for final inspections and acceptances by agencies other than those connected with and a part of the Government. (Comp. Gen. Oct. 20, 1928.)

**Insurance charges.** A contract provision that the contractor carry insurance for the benefit of the Navy must state that the terms of the insurance policy will be satisfactory to the Secretary of the Navy. The policy will be delivered to the purchasing officer, and by him forwarded to the Bureau of Supplies and Accounts for transmission to the Judge Advocate General.

**Insurance as a part of the cost of material furnished.** The Government does not pay insurance on property belonging to it unless such payment is specifically authorized by Congress in making the appropriation involved. Decisions of the Comptroller of the Treasury apparently permit a contractor to insure property prior to its delivery to the Govern-

ment and include the premiums paid as a part of the necessary cost of such material. Under a contract the terms of which provided for the payment to the contractor of "the actual cost of necessary labor and material, plus 10 per cent," liability insurance of 4.2 per cent of the cost of labor was allowed as a legitimate charge in making up the amount to be paid to the contractor under the terms specified. (22 Comp. Dec. 261, Dec. 11, 1915.) When a contractor is given a definite price for material plus the cost of delivery at any other point to which he is required to forward it, and insurance for safe delivery is a normal and legitimate expense, the cost of such insurance may be included in the expense bill as a separate item, provided the charge is a reasonable one, described as "Insurance paid by the contractor while the (name of material) was in his possession and at his risk prior to its delivery into the possession of the Government."

**SEC. 4.1093 Bureaus' material inspectors.** The various technical bureaus have inspectors stationed throughout the United States to inspect material under contract at place of manufacture. These inspectors will be furnished with copies of all contracts, both formal (Standard Form 32) and less formal (S. and A. Form 105) providing for factory inspection and with copies of all orders placed thereunder. (See Sec. 4.1053.)

When material is ready for inspection, the contractor will notify the inspector concerned and prepare for delivery to him the requisite number of copies of reports of material shipped (Form I. N. M. 10). Upon completion of inspection, the inspector will forward certified copies of the report of material shipped to the various offices concerned, two copies being usually forwarded to the supply officer of the yard to which shipment is made.

**Waiver of inspection at point of manufacture.** If not otherwise required by the contract, inspection at place of manufacture or point of shipment may be waived by the bureau concerned, or by its local representative, and inspection made after delivery, when the value of material is small or the distance from an inspection office great (so that the cost of inspection would be large in comparison with the value of the material), or when for other reasons inspection at destination is desirable. In such case the manufacturer shall ship the material at his own risk, subject to inspection after delivery. Inspectors are not authorized to waive inspection of material purchased f. o. b. contractor's works without having first obtained permission from the bureau concerned, the bureau making necessary modifying arrangements with contractors.

**Inspection at point of manufacture—Acceptance as final.** Unless specifically provided otherwise in the contract, inspection at the factory or point of ship-

ment is final as to quality. (See Art. 1611 (2), N. R., Sec. 1.1611, Part I hereof.)

Material accepted f. o. b. contractor's works must not be shipped by contractor on commercial bill of lading. No action toward shipment by contractor should be taken pending receipt of instructions with Government bill of lading. (See Sec. 4.1121.)

**Shipment on Government bill of lading.** Inspection of material covered by contracts which provide for delivery f. o. b. works is to be made before shipment; the material will then be shipped under Government bill of lading.

In rare cases when it is impracticable for material to be inspected before shipment, and it is desired to ship it as Government property under Government bill of lading, provision may be made in the contract for the acceptance of the material without inspection before shipment under the contractor's guaranty to provide for an inspection after delivery at destination, and in case of rejection for failure to comply with the specifications the contractor to accept the return of the material and to replace the same at the point of destination at his own expense with satisfactory material. Under such a guaranty contained in the contract, shipment may be made under Government bill of lading to be furnished by the inspecting officer or under his instructions.

The method outlined in the preceding paragraph is followed only when some distinct advantage to the Government will accrue thereby. In all other cases, if it is impracticable to inspect material before shipment, awards are to be based on delivery by the contractor at the point of destination.

When a chemical analysis of articles or supplies on contracts which provide for delivery f. o. b. works is necessary, shipment will not be made on Government bill of lading until a satisfactory report of the result of analysis is received by the inspector from the laboratory, except in cases where the contract provides for a guaranty as outlined herein. Under contracts which provide for delivery f. o. b. destination, the contractor may be authorized to make the shipment prior to receipt of report of chemical analysis, in which case the inspector will note such fact on the reports of material shipped, and upon receipt of report of chemical analysis will notify the offices concerned by letter of the result of the chemical test.

**Sec. 4.1123 Inspection of material in general—Inspection mandatory.** All purchased material and supplies of every character shall be subjected to inspection and approval as to quantity and quality before payment. (See Sec. 4.1054.)

**Duties of supply officers and inspecting officers.** Persons conducting inspections shall inspect carefully as to quantity and



quality; making or causing to be made such tests as may be required. No material shall be passed unless the inspecting officer is satisfied that it conforms to the requirements of the specifications as included in the requisition or contract. In cases of special emergency minor defects in material needed for immediate use may be waived, by specific authority of the commandant. The inspecting officer shall sign his name to the inspection report (S. and A. Form 65) or prepare a memorandum form, whichever is the station routine, certifying to the fact that the material has been inspected and passed both as regards quality and quantity, or that it has been rejected, stating fully the reasons for the rejection.

**Procedure where Navy standard specifications do not exist.** Where Navy standard specifications do not exist and contracts or orders are, therefore, placed on the basis that the material used in manufacture or construction shall be in accordance with specifications prepared locally, the methods of inspection as given in the standard leaflet specifications and the latest edition of the General Specifications for Inspection of Material, will be followed where applicable.

**Rejections.** In case of rejection, notice thereof shall be sent by the supply officer to the contractor, giving the reasons for the rejection and stating that the supplies are held subject to the contractor's order and at his risk. If not removed by him within 10 days, the supplies so rejected may be returned at the contractor's expense, after due notification, in whatever way the supply officer may consider most convenient.

Rejected material shall in no case be delivered to a contractor's representative except upon surrender of the rejection notice, or upon presentation of an itemized receipt from the contractor or his representative. When rejected material is returned to a contractor by freight or express, the bill of lading or express receipt shall contain an itemized list of such material. The notice, receipt, copy of bill of lading, or express receipt having been indorsed with a statement (signed by the supply officer) of the date, number, and contents of the pass upon which the rejected articles were allowed to leave the yard, shall be filed as a permanent record with the requisition or contract to which it pertains.

**Decision of inspecting officer questioned.** See Art. 1400 (3), N. R.; Sec. 1.1400, Part I hereof.

**Acceptance of rejected material at a reduced price.** Material delivered under a contract and rejected as not conforming to specifications will not be accepted at a reduced price except when—

It is actually needed for Government purposes,

It is entirely fit for Government use,

The reduction in price on bureau contracts and in general, on field contracts, in other than minor cases or in emer-

gency, is approved by the Bureau of Supplies and Accounts before acceptance.

Provisions will not be accepted under any conditions if there is the slightest doubt as to their purity or nutritive value.

**Inspection of special material—Hemp and similar products of variable weight.** Hemp and similar products whose weight varies with the humidity of the atmosphere should be weighed and tagged upon receipt, and subsequent issues made on the basis of such tagged weights. If the difference between the quantity billed and the quantity received is not excessive, inspection reports will be certified for payment on the basis of the billed weights and the difference covered by survey and taken up in or expended from the stock records, as the case may be.

**Lumber.** If check measurements made after delivery of material are within 4 per cent of the original measurement reported by an inspector making inspection at the mill, the original measurement will be accepted as correct without further controversy or investigation, and payment will be made, based on the original measurement. If, however, the check measurement differs by more than 4 per cent from the original measurement, further investigation will be made before settlement is made for the material involved. Lumber culled out for off grade in check inspection after delivery should be included in the 4 per cent tolerance.

When contracts for lumber and timber provide for acceptance of the material f. o. b. contractor's works, mill inspection, acceptance, and shipment by the Government under Government bill of lading is conclusive, unless otherwise stipulated by provisions of the contract. However, check measurements of timber and lumber covered by f. o. b. works contracts should be made after delivery; and shortages in excess of 4 per cent investigated.

**Sec. 4.2000 Sales—Condemned and surplus material—Terms of sale.** Each catalog shall include a statement of the terms of sale, clearly defining all the conditions of the sale, prior inspection, method of payment and delivery, and the bidder's risk and the Government's liability.

Conditions and terms of sale (S. and A. Form 248), which will be an integral part of each catalog, covers the standard conditions of sale. Any restrictions applicable to special materials will be incorporated in the catalog.

The Act of July 9, 1918 (40 U. S. C. 314), provides that the sale of guns and ammunition shall be limited: to other departments of the Government; to foreign states or governments engaged in war against any government with which the United States is at war; to members of the National Rifle Association; and to other recognized associations organized in the United States for the encouragement of small arm target practice. When such articles are offered for sale, condi-

tions necessary to carry this Act into effect will be included.

**Sealed bid sales.** Bids received prior to the date of opening shall be kept in the supply officer's safe.

Bids received by mail after the time advertised for the opening shall be handled as directed in Sec. 4.1042.

**Conduct of sale—Awards.** Awards shall be made by the supply officer as soon as possible after the opening of bids.

No modification of the award price shall be made because of deterioration in the material discovered after award, nor any allowance by delivery of additional material or other material, or in any other manner. When commodities offered for sale are not as advertised, the facts and circumstances shall be referred to the Bureau of Supplies and Accounts for decision.

As soon as practicable after the opening of bids, letters of award shall be prepared by the supply officer and forwarded to the successful bidders.

Letters of award shall enumerate the various lots and items awarded, setting forth the amount bid, the total amount purchased, the amount deposited, and the balance due the Government or the purchaser as the case may be. The method of paying the balance due the Government and the time limit allowed for removal of the material shall be stated in the letter of award, as shall also any special condition stipulated in the terms of sale as applying to any particular material or classes of material.

**Deposits by bidders.** Should a bidder desire to apply his deposit on unsuccessful bids in payment on account of accepted bids, the amount so applied shall be included in the column for deposits on account of accepted bids.

**Deliveries.** Deliveries shall be made in accordance with the terms of sale, unless an extension is granted by the contracting officer. An extension will be given only when, in the opinion of the contracting officer, it is in the interest of the Government. Any extension granted will be in writing. No delivery shall be made until final payment for the entire purchase has been received.

[SEAL] W. B. WOODSON,  
Judge Advocate General of the Navy.

DECEMBER 21, 1938.

[F. R. Doc. 38-3887; Filed, December 23, 1938;  
11:05 a. m.]

## TITLE 47—TELECOMMUNICATION FEDERAL COMMUNICATIONS COMMISSION

### CHAPTER II. GENERAL SUBSTANTIVE RULES PART 25. SPECIAL PROVISIONS RELATING TO COMMON CARRIERS

The Commission adopted the following new rule:

**Sec. 25.01 Cost of projects; disclosures.** Each application by a radiotelegraph or



radiotelephone common carrier for any authorization by the Commission, shall include a statement showing the estimated cost of the project. If such cost is in excess of \$10,000 the principal items of property and the purposes represented by such cost shall be shown. Where any such authorization is granted by the Commission for a project involving expenditure in excess of \$10,000, the applicant, permittee, or licensee shall file with the Commission, within 90 days after completion of the project authorized, a statement showing a summary of expenditures made and the accounting performed in connection therewith. (Sec. 4 (1), 48 Stat. 1066; 47 U. S. C. 154 (1)—Sec. 303 (b), 48 Stat. 1084; 47 U. S. C. 303 (b)—Sec. 319 (a), 48 Stat. 1089; 47 U. S. C. 319 (a)) [Section 26.01, F. C. C., Dec. 19, 1938]

By the Commission,

[SEAL]

T. J. SLOWIE,  
Secretary.

[F. R. Doc. 38-3380; Filed, December 22, 1938;  
2:41 p. m.]

#### CHAPTER XIII—RULES GOVERNING COMMERCIAL RADIO OPERATORS

##### TABLE OF CONTENTS

Part	
160	General.
161	Applications.
162	Examinations.
163	Scope of authority.
164	Miscellaneous
Section	
160.01	Licensed operators required.
160.02	Classes of licenses.
160.03	Dual holding of licenses.
160.04	Term of licenses.
PART 161—APPLICATIONS	
161.01	Procedure.
161.02	Special provisions, radiotelegraph first class.
PART 162—EXAMINATIONS	
162.01	Examination elements.
162.02	Examination requirements.
162.03	Form of writing.
162.04	Passing mark.
162.05	New class, additional requirements.
162.06	Cancelling and issuing new licenses.
162.07	Eligibility for reexamination.
162.08	Renewal examinations and exceptions.
CODE TESTS	
162.21	Transmitting speed requirements.
162.22	Transmitting test procedure.
162.23	Receiving speed requirements.
162.24	Receiving test procedure.
162.25	Computing work or code groups.
PART 163—SCOPE OF AUTHORITY	
163.01	Operators' authority.
163.02	Special privileges.
163.03	Operator's responsibility.
PART 164—MISCELLANEOUS	
164.01	Issue of duplicate license.
164.02	Exhibiting signed copy of application.
164.03	Supervision of examinations for permit.
164.04	Verification card.
164.05	Posting license or verified statement.
SERVICE	
164.06	Endorsement of service record.
164.07	Aviation service endorsements.
164.08	Service acceptability.
164.09	Statement in lieu of service endorsement.

#### PART 160—GENERAL

Sec. 160.01 *Licensed operators required.* Unless otherwise specified by the Commission, the actual operation of any radio station for which a station license is required shall be carried on only by a licensed radio operator of the required class.\* #

Sec. 160.02 *Classes of licenses.* The classes of commercial operator licenses issued by the Commission are:

##### a. Commercial radiotelephone group.

- (1) Radiotelephone second class operator license.
- (2) Radiotelephone first class operator license.

##### b. Commercial radiotelegraph group.

- (1) Radiotelegraph second class operator license.
- (2) Radiotelegraph first class operator license.

##### c. Restricted commercial group.

- (1) Restricted radiotelephone operator permit.
- (2) Restricted radiotelegraph operator permit.\* #

Sec. 160.03 *Dual holding of licenses.* A person may not hold more than one radiotelegraph operator license (or restricted radiotelegraph permit) and one radiotelephone operator license (or restricted radiotelephone operator permit) at the same time.\* #

160.04 *Term of licenses.* Commercial operator licenses are normally issued for a term of five years from the date of issuance.\* #

#### PART 161—APPLICATIONS

Sec. 161.01 *Procedure.* The application form in duplicate for operator license, properly completed and signed, shall be submitted in person or by mail to the office at which the applicant desires to be examined, which office will make the final arrangements for conducting the examination. If the application is for renewal of license, it must be submitted during the last year of the license term and if the service requirements are fulfilled\* the renewal license may be issued by mail. A renewal application shall also be accompanied by the license to be renewed.\* #

Sec. 161.02\* *Special provisions, radiotelegraph first class.* An applicant for the radiotelegraph first class operator license must be at least twenty-one years

\* Promulgated under the authority contained in Sec. 4 (1), 48 Stat. 1066; 47 U. S. C. 154 (1)—Sec. 303 (1), 48 Stat. 1083; 47 U. S. C. 303 (1).

# Adopted by the F. C. C. Dec. 19, 1938, to become effective May 1, 1939.

\* Wherever the term "license" is used generally to denote an authorization from the Commission, it includes both "license" and "permit."

\* See Section 163.01.

\* See Section 162.08.

\* Radiotelegraph first class licenses now held by persons under 21 years of age may be renewed without regard to the age limit provided by Sec. 161.02.

of age at the time the license is issued and shall have had an aggregate of one year of satisfactory service as a radiotelegraph operator manipulating the key of a manually operated radiotelegraph station on board a ship or in a manually operated coastal telegraph station.\* #

#### PART 162—EXAMINATIONS

Sec. 162.01 *Examination elements.* Written examinations will comprise questions from one or more of the following examination elements:

(a) *Basic law.* Provisions of law and regulation with which every operator should be familiar.

(b) *Basic theory and practice.* Technical matters appropriate for every class of license except restricted radiotelephone operator permit.

(c) *Radiotelephone.* Additional matters, both legal and technical, including radiotelephone theory and practice.

(d) *Advanced radiotelephone.* Theory and practice applicable to broadcast station operation.

(e) *Radiotelegraph.* Additional matters, both legal and technical, including radiotelegraph theory and practice.

(f) *Advanced radiotelegraph.* Radiotelegraph theory and practice of wider scope, particularly with respect to ship radio matters (direction finders, ship radiotelephone stations, spark transmitters, etc.).\* #

Sec. 162.02. *Examination requirements.* Applicants for original licenses will be required to pass examinations as follows:

(a) *Radiotelephone second class operator license.*

(1) Ability to transmit and receive spoken messages in English.

(2) Written examination elements: one, two, and three.

(b) *Radiotelephone first class operator license.*

(1) Ability to transmit and receive spoken messages in English.

(2) Written examination elements: one, two, three, and four.

(c) *Radiotelegraph second class operator license.*

(1) Ability to transmit and receive spoken messages in English.

(2) Transmitting and receiving code test of sixteen (16) code groups per minute.

(3) Written examination elements: one, two, five, and six.

(d) *Radiotelegraph first class operator license.*

(1) Ability to transmit and receive spoken messages in English.

(2) Transmitting and receiving code test of twenty-five (25) words per minute plain language and twenty (20) code groups per minute.

(3) Written examination elements: one, two, five and six.



(e) *Restricted radiotelephone operator permit.*

(1) Ability to transmit and receive spoken messages in English.

(2) Written examination element one.

(f) *Restricted radiotelegraph operator permit.*

(1) Transmitting and receiving code text of sixteen (16) code groups per minute.

(2) Written examination elements one, two, and five.\*#

SEC. 162.03 *Form of writing.* Written examinations shall be in English and shall be written by the applicant in long-hand in ink, except that diagrams may be in pencil.\*#

SEC. 162.04 *Passing mark.* A passing mark of 75 per cent of a possible 100 per cent will be required on each element of a written examination.\*#

SEC. 162.05 *New class, additional requirements.* The holder of a license, who applies for another class of license, will be required to pass only the added examination elements for the new class of license.\*#

SEC. 162.06 *Cancelling and issuing new licenses.* If the holder of a license qualifies for a higher class in the same group, the license held will be cancelled upon the issuance of the new license. Similarly, if the holder of a restricted operator permit qualifies for a first or second class operator license of the corresponding type, the permit held will be cancelled upon issuance of the new license.\*#

SEC. 162.07 *Eligibility for reexamination.* An applicant who fails an examination element will be ineligible for two months\* to take an examination for any class of license requiring that element. Examination elements will be graded in the order listed,\* and an applicant may, without further application, be issued the class of license for which he qualifies.\*#

SEC. 162.08 *Renewal examinations and exceptions.* A license may be renewed without examination provided the service record on the license\* shows at least three years satisfactory service in the aggregate during the license term and while actually employed as a radio operator under that license; or shows at least two years service in the aggregate, under the same conditions, of which one year must have been continuous and immediately prior to the date of application for renewal.

If the above requirements have not been fulfilled, but the service record shows at least three months satisfactory

service in the aggregate, while actually employed as a radio operator under the license during the last three years of the license term, a license may be renewed upon the successful completion of a renewal examination which may be taken at any time during the last year of the license term.

Renewal examinations will consist of the same elements as for original licenses. However, the written examination will be directed toward a determination of the applicant's qualifications to continue to hold the license for which he has previously qualified. If the renewal examination is not successfully completed before expiration of the license sought to be renewed, or if the service is not acceptable, the applicant will be examined as for the original license.\*#

#### CODE TESTS

SEC. 162.21 *Transmitting speed requirements.* An applicant is required to transmit correctly in the International Morse Code for one minute at the rate of speed prescribed in these rules for the class of license desired.\*#

SEC. 162.22 *Transmitting test procedure.* Transmitting tests shall be performed by the use of the conventional Morse key except that a semi-automatic key, if furnished by the applicant, may be used in transmitting code tests of twenty-five words per minute.\*#

SEC. 162.23 *Receiving speed requirements.* An applicant is required to receive the International Morse Code by ear, and legibly transcribe, consecutive words or code groups for a period of one minute without error at the rate of speed specified in the rules for the class of license for which application is made.\*#

SEC. 162.24 *Receiving test procedure.* Receiving code tests shall be written in longhand either in ink or pencil except that in the case of the twenty-five words per minute code test a typewriter may be used when furnished by the applicant.\*#

SEC. 162.25 *Computing word or code groups.* Each five characters shall be counted as one word or code group. Punctuation marks or figures count as two characters.\*#

#### PART 163—SCOPE OF AUTHORITY

SEC. 163.01 *Operators' authority.* The various classes of commercial operator licenses issued by the Commission authorize the holders thereof to operate radio stations, except amateur, as follows:

(a) *Radiotelephone Second Class Operator License.* Any station while using type A-0, A-3, A-4 or A-5 emission except standard broadcast stations, International Broadcast stations or ship stations licensed to use power in excess of 100 watts and type A-3 emission for communication with coastal telephone stations.

(b) *Radiotelephone First Class Operator License.* Any station while using type A-0, A-3, A-4, or A-5 emission ex-

cept ship stations licensed to use a power in excess of 100 watts and type A-3 emission for communication with coastal telephone stations.

(c) *Radiotelegraph Second Class Operator License.* Any station while using type B, A-0, A-1, A-2, A-3 or A-4 emission except

(1) Any of the various classes of broadcast stations other than a relay broadcast station, or

(2) On a passenger\* vessel required by treaty or statute to maintain a continuous radio watch by operators or on a vessel having continuous hours of service for public correspondence, the holder of this class of license may not act as chief operator.

(3) On a vessel (other than a vessel operated exclusively on the Great Lakes) required by treaty or statute to be equipped with a radiotelegraph installation, the holder of this class license may not act as chief or sole operator until he has had at least six months' satisfactory service as a qualified radiotelegraph operator on a vessel of the United States.

(d) *Radio telegraph first class operator license.* Any station while using type B, A-0, A-1, A-2, A-3, or A-4 emission except

(1) Any of the various classes of broadcast stations other than a relay broadcast station.

(2) On a cargo vessel (other than a vessel operated exclusively on the Great Lakes) required by treaty or statute to be equipped with a radiotelegraph installation, the holder of this class license may not act as chief or sole operator until he has had at least six months' satisfactory service as a qualified radiotelegraph operator on a vessel of the United States.

(e) *Restricted radiotelephone operator permit.* Any station while using type A-0, A-3, or A-4 emission; provided that,

(1) Such operator is prohibited from making adjustments that may result in improper transmitter operation.

(2) The equipment is so designed that none of the operations necessary to be performed during the course of normal rendition of service may cause off-frequency operation or result in any unauthorized radiation.

(3) Any needed adjustments of the transmitter that may affect the proper operation of the station are regularly made by or in the presence of an operator holding a first or second class license, either telephone or telegraph, who shall be responsible for the proper operation of the equipment.

#### Exceptions:

(1) The permit is not valid for the operation of any of the various classes of

\*A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers. A cargo ship means any ship not a passenger ship.

\*A month after date is the same day of the following month, or if there is no such day, the last day of such month. This principle applies for other periods. For example, in the case of the two month period to which this note refers, an applicant examined December 1 may be reexamined February 1, and an applicant examined December 29, 30, or 31 may be reexamined the last day of February, while one examined February 28 may be reexamined April 28.

\* See Section 162.02.

\* See Sections 164.06 to 164.09, inclusive.



broadcast stations other than a relay broadcast station.

(2) The permit is not valid for the operation of a coastal telephone station or a coastal harbor station other than in the Territory of Alaska.

(3) The permit is not valid for the operation of a ship station licensed to use type A-3 emission for communication with coastal telephone stations.

(f) *Restricted radiotelegraph operator permit.*

Any station while using type B, A-0, A-1, A-2, A-3, or A-4 emission; provided that, in the case of equipment designed for and using type A-3 or A-4 emission,

(1) Such operator is prohibited from making adjustments that may result in improper transmitter operation.

(2) The equipment is so designed that none of the operations necessary to be performed during the course of normal rendition of service may cause off-frequency operation or result in any unauthorized radiation.

(3) Any needed adjustments of the transmitter which may affect proper operation of the station are regularly made by or in the presence of an operator holding a first or second class license, either telephone or telegraph, who shall be responsible for the proper operation of the equipment.

#### Exceptions:

(1) The permit is not valid for the operation of any of the various classes of broadcast stations other than a relay broadcast station.

(2) The permit is not valid for the operation of a ship station licensed to use type A-3 emission for communication with coastal telephone stations.

(3) The license is not valid for the operation of a radiotelegraph station on board a vessel required by treaty or statute to be equipped with a radio installation.

(4) The license is not valid for the operation of any ship telegraph, coastal telegraph, or marine-relay station open to public correspondence.\* #

#### Sec. 163.02 Special privileges.

(a) Any operator may operate any station in the experimental service, while using frequencies above 300,000 kilocycles.

(b) Subject to the limitations set forth herein\* the holder of any class radiotelephone operator license may operate a radiotelephone point-to-point station, a coastal harbor, or coastal telephone station while using A-1, or A-2 emission, for testing or other transmission entirely secondary and incidental to the service of such station.\* #

Sec. 163.03 *Operator's responsibility.* The licensed operator responsible for the maintenance of a transmitter may permit other persons to adjust a transmitter

in his presence for the purpose of carrying out tests or making adjustments requiring specialized knowledge or skill, provided that he shall not be relieved thereby from responsibility for the proper operation of the equipment.\* #

#### PART 164—MISCELLANEOUS

Sec. 164.01 *Issue of duplicate license.* An operator whose license or permit has been lost, mutilated, or destroyed, shall immediately notify the Commission. A sworn application for duplicate should be submitted to the office of issue embodying a statement attesting to the facts thereof. If a license has been lost, the applicant must state that reasonable search has been made for it, and further, that in the event it be found either the original or the duplicate will be returned for cancellation. The applicant must also give a statement of the service that has been obtained under the lost license.\* #

Sec. 164.02 *Exhibiting signed copy of application.* When a duplicate operator license or permit has been requested, or request for renewal upon service has been made, the operator shall exhibit in lieu thereof a signed copy of the application for duplicate, or renewal, which has been submitted by him.\* #

Sec. 164.03 *Supervision of examinations for permit.* Persons other than employees of the Commission may be authorized to supervise examinations for Restricted Radiotelephone Operator Permits for one or more employees of a division of local or State Government, provided:

a. That the absence of such employees for the purpose of taking an examination at a field office or designated examining city would interfere with the proper functioning of the division, and

b. That the chief of police, director of public safety, or other official of equal responsibility furnish the names of the persons to be examined and designate an official by name and title to supervise the examination. The application for supervisory examination shall be made to the inspector in charge of the district in which the applicants are located.\* #

Sec. 164.04 *Verification card.* The holder of an operator license who operates any station in which the posting of an operator license is not required, may, upon filing application\* in duplicate, accompanied by his license, obtain a Verification Card.\* This card may be carried on the person of the operator in lieu of the original operator license, provided the license is readily accessible within a reasonable time for inspection upon demand by an authorized Government representative.\* #

Sec. 164.05 *Posting license or verified statement.* The holder of a radio-

telegraph or radiotelephone first or second class license who is employed as a service and maintenance operator at stations operated by holders of Restricted Operator Permits shall post at such station his operator license or a verified statement from the Commission\* in lieu thereof.\* #

#### SERVICE

Sec. 164.06 *Endorsement of service record.* A station licensee, or his duly authorized agent, or the master of a vessel acting as the agent of a licensee, shall endorse the service record appearing on said operator license, showing the call letters and types of emission of the station operated, the nature and period of employment and quality of performance of duty.\* #

Sec. 164.07 *Aviation service endorsement.* If the operator has operated more than three stations in the aviation service, the service may be shown by giving the name of the aviation chain or company in lieu of listing the call letters of the several stations.\* #

Sec. 164.08 *Service acceptability.* Credit will be allowed only for satisfactory service obtained under conditions that required the employment of licensed operators, or when obtained at United States Government stations.\* #

Sec. 164.09 *Statement in lieu of service endorsement.* The holder of a Radiotelegraph License or a Restricted Radiotelegraph Operator Permit desiring an endorsement to be placed thereon attesting to an aggregate of at least six months' satisfactory service as a qualified operator on a vessel of the United States, may, in the event documentary evidence cannot be produced, submit to any office of the Commission, a statement under oath accompanied by the license to be endorsed, embodying the following:

- (1) Names of ships at which employed;
- (2) Call letters of stations;
- (3) Types of emission used;
- (4) Type of service performed as follows:
  - (a) Manual radiotelegraph operation only; and
  - (b) Transmitter control only; or
  - (c) Combination of (a) and (b) running concurrently;
- (5) Whether service was satisfactory or unsatisfactory;
- (6) Period of employment;
- (7) Name of master, employer, licensee or his duly authorized agent.\* #

By the Commission.

[SEAL]

T. J. SLOWIE,  
Secretary.

[F. R. Doc. 38-3881; Filed, December 22, 1938; 2:41 p. m.]

\* Section 163.01.

\* Form 756.

\* Form 758-F.

\* Form 759.



# CHAPTER XIII. RULES GOVERNING PROFESSIONAL RADIO OPERATORS

The Commission repealed the following rules by Order of December 19, 1938, to become effective May 1, 1939:

422	C. F. R. Sec. 161.02
423	C. F. R. Sec. 161.03
424	C. F. R. Sec. 161.04
425	C. F. R. Sec. 161.10
426	C. F. R. Sec. 161.11
427	C. F. R. Sec. 161.12
428	C. F. R. Sec. 161.13
429	C. F. R. Sec. 161.20
430	C. F. R. Sec. 161.21
431	C. F. R. Sec. 161.22
432	C. F. R. Sec. 161.23
433	C. F. R. Sec. 160.50
434	C. F. R. Sec. 160.51
435	C. F. R. Sec. 160.52
436	C. F. R. Sec. 160.53
437	C. F. R. Sec. 160.54
438	C. F. R. Sec. 160.55
439 (2) <sup>1</sup>	C. F. R. 160.25
439 (3)	C. F. R. 160.26
439 (4)	C. F. R. 160.27
439 (5)	C. F. R. 160.28
439 (6)	C. F. R. 160.29
439 (7)	C. F. R. 160.30
440	C. F. R. 160.35
441	C. F. R. 160.20
442	C. F. R. 160.10
443	C. F. R. 162.01
444	C. F. R. 162.02
445	C. F. R. 162.03
446	C. F. R. 162.04
448	C. F. R. 160.01

By the Commission.

[SEAL]

T. J. SLOWIE,  
Secretary.

[F. R. Doc. 38-3882; Filed, December 22, 1938; 2:41 p. m.]

# CHAPTER XVII. RULES GOVERNING POSTING, FILING, ETC. OF TARIFFS

## PART 227. CHANGES IN SCHEDULES

The Commission amended the following section, effective January 1, 1939, to read as follows:

SEC. 227.07 *Schedules attributable to foreign carrier or administration.* When any change is made in a charge by a foreign carrier or foreign administration not subject to the Act and such charge is used as a factor of through charges published and filed by a carrier subject to the Act, for communications between points in the United States and points in any foreign country, a change in such through charges may be established by the carrier subject to the Act on not less than one day's notice to the Commission and to the public; provided (1) that the carrier subject to the Act has no control over such charge of such foreign carrier or foreign administration by contract or otherwise, (2) that the change in through charges shall reflect only the difference

in through charges caused by the change in such charge of such foreign carrier or foreign administration, (3) that a tariff, supplement or revised page shall be filed each time a reduction is made in the charge of such foreign carrier or foreign administration, as well as when increases are made, and (4) that every such tariff, supplement and revised page shall be accompanied by a memorandum showing the portion of the through charges accruing to the carrier subject to the Act. (Sec. 203 (a), 48 Stat. 1070; 47 U. S. C. 203 (a)) [Rule 8 (g), Tariff Circular No. 1, as amended by Order No. 12-E, F. C. C., Dec. 19, 1938]

By the Commission.

[SEAL]

T. J. SLOWIE,  
Secretary.

[F. R. Doc. 38-3883; Filed, December 22, 1938; 2:42 p. m.]

# CHAPTER XXII. RULES GOVERNING THE FILING OF INFORMATION, CONTRACTS, PERIODIC REPORTS, ETC.

## PART 343. SPECIAL REPORTS

### Damage Claims Relating to Traffic

The Commission repealed Telegraph Division Order No. 24, effective December 19, 1938. This had the effect of repealing Sections 343.01, 343.02, and 343.03.

Effective December 19, 1938, the Commission adopted the following sections, embodying the requirements of Telegraph Division Order No. 24:

SEC. 343.01 *Separate files for each claim.* Each telegraph carrier subject to the Communications Act of 1934 shall maintain separate files for each damage claim or complaint of a traffic nature filed with or against the carrier, including those upon which message tolls or revenues are returned to the claimant, showing the name and address of claimant, the nature of the claim, disposition made and all correspondence, reports, and records pertaining thereto. These files shall be maintained in accordance with existing rules and regulations regarding destruction of records (Chapter XVIII of Federal Communications Commission Regulations),<sup>1</sup> and at points (one or more) to be specifically designated by each carrier.\* #

SEC. 343.02 *Summary of claims to be reported: verification.* Each telegraph carrier subject to the Communications Act of 1934 shall report to the Commission a summary of claims or complaints described in Sec. 343.01, in duplicate. Such reports shall be submitted to the Commission annually for each year from January 1 to December 31, on a form prescribed by the Commission, and shall be filed with the Commission within three

<sup>1</sup>Promulgated under the authority contained in Sec. 4 (1), 48 Stat. 1066; 47 U. S. C. 154 (1)—Sec. 206, 48 Stat. 1072; 47 U. S. C. 206.

\*Adopted by the F. C. C., Dec. 19, 1938.

<sup>1</sup>3 F. R. 2194, 3000 DI.

months after the close of the year for which the report is made. The responses must be verified upon the oath of the officer of the reporting carrier under whose direction and supervision they are compiled.\* #

SEC. 343.03 *Certain claims or complaints not included.* The provisions of Sections 343.01 and 343.02 shall not extend to claims or complaints which are not reduced to writing by the complainant and on which no payment or return of tolls is made.\* #

By the Commission.

[SEAL]

T. J. SLOWIE,  
Secretary.

[F. R. Doc. 38-3884; Filed, December 22, 1938; 2:42 p. m.]

# TITLE 49—TRANSPORTATION AND RAILROADS

## INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-2]

### ORDER IN THE MATTER OF MAXIMUM HOURS OF SERVICE OF MOTOR CARRIER EMPLOYEES

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 22nd day of December, A. D. 1938.

Upon further consideration of the record in the above-entitled proceeding and good cause therefor appearing:

It is ordered, That the effective date of the Commission's order of July 12, 1938,<sup>1</sup> in said proceeding, prescribing hours of service regulations applicable to drivers employed by common and contract carriers in interstate and foreign commerce, heretofore postponed to December 31, 1938, be, and it is hereby, further postponed to January 31, 1939, insofar as it applies to common and contract carriers of property and their employees.

It is further ordered, That the effective date of the provisions of Rule 5 of the Regulations prescribed by said order of July 12, requiring the maintenance of a driver's log, heretofore postponed to December 31, 1938, be, and it is hereby, further postponed to January 31, 1939, insofar as said Rule 5 applies to common and contract carriers of passengers and their employees.

By the Commission.

[SEAL]

W. P. BARTEL,  
Secretary.

[F. R. Doc. 38-3892; Filed, December 23, 1938; 12:12 p. m.]

### ORDER IN THE MATTER OF ANNUAL REPORTS FROM CLASS I MOTOR CARRIERS OF PROPERTY AND CLASS I MOTOR CARRIERS OF PASSENGERS

At a session of the Interstate Commerce Commission, Division 5, held at

<sup>1</sup>3 F. R. 1876.



its office in Washington, D. C., on the 21st day of December, A. D. 1938.

The subject of the requirement of annual reports from Class I motor carriers being under consideration

*It is ordered,* That all Class I Motor Carriers of Property and all Class I Motor Carriers of Passengers, subject to the Interstate Commerce Act be, and they hereby are, required to file annual reports for the year ending December 31, 1938, in accordance with Annual Report Form (Class I Motor Carriers of Property or Passengers) which is hereby approved and made a part of this order.<sup>1</sup>

*It is further ordered,* That the annual report shall be prepared in triplicate, two copies filed in the Bureau of Motor Carriers, Interstate Commerce Commission, Washington, D. C., on or before March 31, 1939, and the third copy retained by respondent.

By the Commission, division 5.

[SEAL] W. P. BARTEL,  
Secretary.

[F. R. Doc. 38-3593; Filed, December 23, 1938;  
12:12 p. m.]

### Notices

#### DEPARTMENT OF THE INTERIOR.

Division of Territories and Island Possessions.

[I. C. C. No. 252\*]

#### THE ALASKA RAILROAD

LOCAL PASSENGER TARIFF NO. 192-C NAMING  
ROUND TRIP EXCURSION FARES BETWEEN  
STATIONS ON THE ALASKA RAILROAD AC-  
COUNT CHRISTMAS

Issued under authority of Rule 52 Interstate Commerce Commission Tariff Circular No. 18-A. Issued, December 1, 1938. Effective, December 20, 1938. Authority: Act, March 12, 1914 and Executive Order No. 3861. Issued by O. F. Ohlson, General Manager, Anchorage, Alaska.

#### General Rules and Regulations

1. *Stations from and to which this tariff applies.*—This tariff applies from and to all rail line stations. Conductors picking up passengers at non-agency stations will handle passenger to first agency station where ticket must be secured from originating station to final destination.

2. *Dates of sale.*—December 20, 1938 to December 31, 1938, both dates inclusive.

3. *Final return limit.*—January 6, 1939.

<sup>1</sup>Filed as a part of the original document with the Division of the Federal Register, The National Archives; requests for copies should be addressed to the Interstate Commerce Commission.

<sup>2</sup>No supplement will be issued to this tariff except for the purpose of cancelling the tariff.

4. *Fares.*—One first class fare and a third for the round trip. First class fares are shown in Local Passenger Tariff No. 42-B, I. C. C. No. 177, supplements thereto and reissues thereof. Agents in selling round trip tickets under this tariff will add sufficient to make fare end in "0" or "5" for the round trip.

5. *Stopovers.*—Stopovers will be permitted at all points within final return limit on both going and return trip. Stopover will be granted on application to conductor who will endorse on reverse side of ticket "Off at ----- station, date -----, train No. -----." This endorsement will be signed and transportation returned to passenger.

6. *Tickets.*—Use Form L-14 Round Trip excursion ticket.

7. *Children.*—Tickets may be sold at one-half the fares named herein for children five (5) years of age and under twelve (12) years of age, sufficient to be added to make fare end in "0" or "5". Children under five (5) years of age will be carried free when accompanied by parent or guardian.

8. *Baggage.*—For baggage rules including free allowances, excess charges, etc., see Local Baggage Tariff No. 2, I. C. C. No. 22 (Alaskan Engineering Commission Series), supplements thereto and reissue thereof. Excess baggage charges will be made on basis of the one-way fares shown in Local Passenger Tariff No. 42-B, I. C. C. No. 177, supplements thereto and reissues thereof.

9. *Tickets non-transferable.*—All tickets sold at fares named herein are non-transferable.

The above is hereby confirmed.

RUTH HAMPTON,  
Assistant Director.

[F. R. Doc. 38-3586; Filed, December 23, 1938;  
10:40 a. m.]

#### DEPARTMENT OF LABOR.

##### Wage and Hour Division.

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO PART 516 OF REGULATIONS WITH RESPECT TO THE KEEPING OF SPECIAL OR ADDITIONAL RECORDS BY EMPLOYERS OF INDUSTRIAL HOME WORKERS

Whereas, Section 11 (c) of the Fair Labor Standards Act of 1938 provides that every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

Whereas, the Administrator of the Wage and Hour Division, on October 21, 1938, issued Title 29, Chapter 5, Part 516, entitled Regulations on Records to be kept by Employers Pursuant to Section 11 (c) of the Fair Labor Standards Act of 1938 (52 Stat. 1060);<sup>1</sup> and

Whereas, the Administrator is considering the desirability of amending Part 516 of said regulations to require special or additional records to be kept by employers of industrial home workers, such as: date work is given to and returned by industrial home workers, amount of work given and returned, list of articles worked on, operations performed and hours worked;

Now, therefore, notice is hereby given of a public hearing to be held on January 4, 1939, at 10:00 o'clock A. M., at the Raleigh Hotel, located at Pennsylvania Avenue and Twelfth Street, Washington, D. C., before Mr. Merle D. Vincent, the presiding officer hereby designated, at which interested parties will be heard on the following question:

What, if any, amendments should be made to Part 516 of regulations issued under section 11 (c) of the Fair Labor Standards Act of 1938, to require special or additional records to be kept by employers of industrial home workers.

Interested persons will also be heard on all aspects of the application of the Fair Labor Standards Act to employers of industrial home workers and to the employees employed by them.

Written briefs dealing with this subject will be considered.

Signed at Washington, D. C., this twenty-third day of December 1938.

ELMER F. ANDREWS,  
Administrator.

[F. R. Doc. 38-3894; Filed, December 23, 1938;  
12:21 p. m.]

#### FEDERAL COMMUNICATIONS COMMISSION.

##### RENEWAL OF COMMERCIAL RADIO OPERATOR LICENSES

At a meeting of the Federal Communications Commission held at its offices in Washington, D. C., December 19, 1938

Whereas, The Commission has this day adopted, effective May 1, 1939, revised rules governing commercial radio operator licenses, and

Whereas, it appears necessary to provide for a certain transition period during which the present holders of licenses may continue to operate radio stations and may have a reasonable opportunity to obtain renewal of such licenses in accordance with the revised rules,

*It is ordered,* That all licenses outstanding as of this date shall continue

<sup>1</sup> 3 F. R. 2533 DI.



in force for the remainder of their respective terms. However, a licensee may apply for renewal under the terms of the new regulations at any time during the remainder of the license period.

*It is further ordered,* That all outstanding radiotelegraph licenses bearing an endorsement granting privileges comparable with a radiotelephone license of any class shall be considered as two separate licenses and application for renewal thereof shall be made separately.

*It is further ordered,* That radiotelegraph first class licenses now held by persons under twenty-one years of age may be renewed without regard to the age limit provided by Section 161.02.

*It is further ordered,* That Rules 422 to 448, inclusive, be and they are hereby, repealed as of May 1, 1939, except that Paragraph (2) of Rule 439 shall remain in effect with respect to renewal of three-year licenses outstanding on May 1, 1939.

By the Commission.

[SEAL]

T. J. SLOWIE,  
Secretary.

[F. R. Doc. 38-3885; Filed, December 23, 1938;  
2:42 p. m.]

#### SECURITIES AND EXCHANGE COMMISSION.

##### *United States of America—Before the Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 21st day of December, A. D. 1938.

[File Nos. 31-419, 60-1]

##### IN THE MATTER OF UTILITIES EMPLOYEES SECURITIES COMPANY, NEW ENGLAND CORPORATION

##### ORDER CONSENTING TO WITHDRAWAL OF APPLICATION UNDER SECTION 2 (A) (8) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Upon the request of Applicant, the Commission consents to the withdrawal of the application in File No. 31-419. Such application and all amendments thereto and all other documents heretofore made part of the Record in the consolidated hearing on File Nos. 31-419 and 60-1 shall continue to stand as part of

the Record in File No. 60-1, and to that effect.

It is so ordered.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 38-3889; Filed, December 23, 1938;  
11:10 a. m.]

##### *United States of America—Before the Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 23 day of December, A. D. 1938.

[File No. 58-2]

##### IN THE MATTER OF PENNSYLVANIA INVESTING CORPORATION

##### NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 12 (F) and Rule U-12F-1 promulgated thereunder of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named part;

*It is ordered,* That a hearing on such matter be held on January 5th, 1939, at 10 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

*It is further ordered,* That Willis E. Monty or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or con-

sumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before December 31st, 1938.

The matter concerned herewith is in regard to an application pursuant to Rule U12c-1 filed by Pennsylvania Investing Corporation, a direct subsidiary of the Central U. S. Utilities Company and an indirect subsidiary of the Associated Electric Company seeking approval of the sale by it to Kentucky-Tennessee Light and Power Company, an Associated company of the latter company's First and Refunding Mortgage 5% bonds due May 1, 1954. The proposed sale is to be made to the issuing company and the bonds acquired are immediately to be retired. The proposed selling price will be the average cost thereto to the applicant, plus an amount equal to the applicable amortized discount on said bonds to date of tender without adjustment for accrued interest thereon.

By a previous Order of this Commission such bonds may only be retired by funds derived from the sale of the physical assets of Kentucky-Tennessee Light and Power Company. It is stated that the funds to be employed in the purchase were or are to be so derived. It is stated that the Trustee under the mortgage of Kentucky-Tennessee dated January 1, 1923, now holds on deposit the sum of \$260,000, the proceeds of the sale of certain property of said Company and that it is anticipated that \$972,000 additional amount will be available in the near future from the sale of additional physical property of Kentucky-Tennessee.

The applicant proposes to sell \$1,400,000 principal amount of said bonds for the total sum of \$1,232,000 which is stated to be at the rate described above.

The applicant also requests that this application be the basis for the approval of similar transactions in the future until all of said bonds are retired.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 38-3888; Filed, December 23, 1938;  
11:10 a. m.]